

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

TERRANCE SMITH,

Petitioner,

v.

CRIMINAL ACTION NO. 2:02cr217-5

UNITED STATES OF AMERICA,

Respondent.

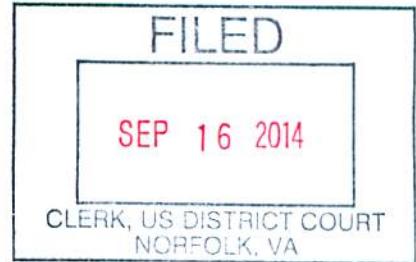
MEMORANDUM ORDER

This matter is before the Court on Petitioner Terrance Smith's Motion to Vacate, Set Aside or Correct a Sentence Previously Imposed pursuant to 28 U.S.C. § 2255 ("§ 2255 Petition").

Specifically, Petitioner challenges the Court's application of the career offender enhancement, U.S.S.G. § 4B1.1—in light of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), and *Miller v. United States*, 735 F.3d 141 (4th Cir. 2013). *See also Whiteside v. United States*, 748 F.3d 541 (4th Cir. 2014) (erroneous application of career offender enhancement is cognizable in § 2255 proceedings and equitable tolling is warranted), *reh'g en banc granted*, 2014 WL 3377981 (4th Cir. July 10, 2014).¹

Title 28 U.S.C. § 2255 authorizes a person in federal custody to seek to vacate his sentence or conviction if either was improperly attained. Section 2255(h) provides that a

¹ On September 15, 2014, this Court granted a motion by the United States to stay the briefing schedule in this case pending the *en banc* rehearing of *Whiteside v. United States*, 748 F.3d 541 (4th Cir. 2014). In light of this Order, the stay is hereby vacated and the need for the United States to respond to the Petition is rendered moot.



“second or successive motion” must be certified by the appropriate court of appeals. Petitioner previously filed a § 2255 Petition on July 12, 2007. This Court dismissed the Petition on January 31, 2008. Petitioner then filed a Motion to Dismiss, which this Court construed as a second § 2255 Petition, on June 18, 2012. The Court dismissed Petitioner’s second petition on June 21, 2012. The instant § 2255 Petition was filed on July 28, 2014. On August 8, 2014, the United States Court of Appeals for the Fourth Circuit (“Fourth Circuit”) denied Petitioner’s motion under 28 U.S.C. § 2244 for an order authorizing this Court to consider a second or successive application for relief under 28 U.S.C. § 2255. ECF No. 390. Because Petitioner has failed to obtain authorization from the Fourth Circuit to file a successive petition, the Court lacks jurisdiction to consider this § 2255 Petition. Accordingly, Petitioner’s request is **DISMISSED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to Petitioner and to the United States Attorney.

The Court **ADVISES** Petitioner that he may appeal this final order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, VA 23510. The Clerk must receive this written notice within sixty (60) days from this Order’s date.

IT IS SO ORDERED.

Norfolk, Virginia
September 16, 2014



Raymond A. Jackson
United States District Judge